REMARKS

Applicant thanks the Examiner for the careful consideration given to this application. Reconsideration and allowance are now respectfully requested in view of the following remarks. Claims 1, 3-13, 15-17 and 19-24 are pending in this application. Claims 1, 13, 17 and 21 are independent claims.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 3, 4, 6-13, 15, 17, 19, 21, 22 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2001/0055356 to Davies (hereinafter "Davies") in view of U.S. Patent Publication No. 2005/0031051 to Rosen et al. (hereinafter "Rosen"), and further in view of U.S. Patent Publication No. 2001/0029523 to Mcternan et al. (hereinafter "Mcternan"). This rejection is respectfully traversed.

Applicants submit that the combination of Davis, Rosen and Mcternan does not teach or suggest the combination of elements recited in claims 1, 3, 4, 6-13, 15, 17, 19, 21 and 22. Independent claims 1 and 21, in part, recite "foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when the detecting step detects an acknowledgement transmission from the each of the plurality devices except for said particular device."

Independent claim 13, in part, recites "forego retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when an acknowledgement transmission from the each of plurality devices except for said particular device is detected."

Independent claim 17, in part, recites "means for foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when said means for detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device." As acknowledged in the Office Action, the combination of Davis and Rosen does not teach or suggest these features.

Mcternan does not cure the deficiencies of Davis and Rosen. Paragraph 0071 of Mcternan further discloses that

> The Media Player 376 issues requests for media packets 352 to a server 338 or 364. If the server 338 or 364 is multicasting the content, the client request takes

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the form of a subscription to the router 372. Packets are received across the network 368 via the client's network interface adapter. The Media Player 376 or other application requesting data from the server accepts and records receipt of packets in memory. Upon receipt of a duplicate packet, the client will stop receiving further packets, as the receipt of a duplicate packet is an indication that the packet sequence has looped around to the point at which the client first starting receiving packets and therefore the client should have received al the packets in the sequence. The client checks whether any packets in the sequence are missing and, if so, determines if the time to wait for the Looping Data Sender 350 to retransmit the packet is greater than a time threshold, such as the time needed to directly request and receive the missing packet or packets from the server, or a predefined threshold set by the content producer. If the time to wait for the packet to be received is greater than the threshold, the Download Manager 378 issues a request to the Client Request Handler 356. Upon receiving the request, the Client Request Handler 356 accesses the Looping Data Sender 350, duplicates the requested packet and transmits it to the client 336. The result is that <u>clients are continually fed a stream of requested data and can recover missing packets by either simply awaiting retransmission of the packet or requesting it directly, whichever the client deems is most efficient given the bandwidth constraints of the client</u>. (underlining added)

So according to paragraph 0071 of Mcternan, if the client does not receive a packet, there is no foregoing of future transmission, as recited in the pending claims. Instead, the client either waits for retransmission of the missing packet or directly requests transmission of the missing packet. Unlike what is alleged on page 4 of the Office Action, that is, that Mcternan discloses foregoing retransmission, Mcternan discloses that the client requests retransmission in two ways – one, that the client determines if the time to wait for retransmission is greater than a predefined threshold, then the client makes the request instead of waiting for the time for retransmission; and two, that the client determines if the time to wait for retransmission is less than a predefined threshold, then the client simply waits for the time for retransmission. In either method as disclosed by Mcternan, retransmission is requested. There is no teaching or suggestion in the cited sections of Mcternan of foregoing retransmission, as alleged in the Office Action.

Claims 1 and 21, on the other hand, recite "foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold <u>and</u> when the detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device." (underlining added) Claims 13 and 17 recite similar features, as noted above. So according to the pending claims, transmission is foregone when (1) "said

number of consecutive times exceeds a predetermined threshold" and (2) "the detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device."

In addition, in Mcternan, it is the client who waits for retransmission of the missing packet or directly requests transmission of the missing packet. In the pending claims, on the other hand, the foregoing transmission is perform by the receiving device. Therefore, the actors that allegedly forego transmission, in Mcternan, are different from those recited in the pending claims.

Although on page 4, the Office Action acknowledged that Davies does not teach or suggest the foregoing element, as recited in the pending claims, and the Office Action cited Mcternan to cure these deficiencies, in the Response to Arguments section, the Office Action alleged that Davis also discloses that retransmission is suppressed (foregone) when the validity of the data has expired (allegedly "a predetermined time threshold"). Applicants submit that even though the cited sections of Davis discloses that retransmission is suppressed when the validity of the data has expired, there is no teaching or suggestion in Davis that such suppression is performed after comparing the alleged "predetermined time threshold" with "the number of consecutive times an acknowledgement packet is not received from a particular one of the plurality of devices" and when "when said number of consecutive times exceeds" the "predetermined time threshold." Therefore, Davis also fails to teach or suggest "foregoing retransmission of the data packet <u>when said number of consecutive times exceeds a predetermined threshold</u>," as recited in the pending claims. (underlining added)

Furthermore, as noted on page 4 of the Office Action, there is no teaching or suggestion in Davis of "foregoing retransmission of the data packet when ... the detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device," as recited in the pending claims. So Davis fails to teach or suggest both conditions recited in the pending claims for foregoing transmission.

Moreover, the suppression of retransmission, as disclosed in paragraph 0021 of Davis would be impossible according the disclosure of paragraph 0071 of Mcternan. As discussed above, in Mcternan, the client either waits for retransmission of the missing packet or directly requests transmission of the missing packet. So in Mcternan, one would not have the

"predetermined time threshold" of Davis, as Mcternan would request retransmission before such "predetermined time threshold" occurs.

Therefore, the combination of Davis, Rosen and Mcternan does not teach or suggest "foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when the detecting step detects an acknowledgement transmission from the each of the plurality devices except for said particular device," as recited in the pending claims.

Based on the distinctions noted above, Applicants respectfully submit that the cited references do not teach or suggest the combination of elements recited in claims 1, 13, 17 and 21. Each of claims 3, 4, 6-12, 15, 19 and 22 depends on claims 1, 13, 17 and 21, and thus incorporates all of the elements of claims 1, 13, 17 and 21, in addition to the further limitations recited in claims 3, 4, 6-12, 15, 19 and 22. Hence, claims 3, 4, 6-12, 15, 19 and 22 are also allowable at least because of their dependence on claims 1, 13, 17 and 21. Therefore, Applicants respectfully request that this rejection of claims 1, 3, 4, 6-13, 15, 17, 19, 21, 22 and 24 under 35 U.S.C. §103 be withdrawn.

Claims 5, 16, 20 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Davies et al. in view of Rosen, in view of Mcternan, and in further view of U.S. Patent Publication No. 2002/0136268 to Gan et al. (hereinafter "Gan"). This rejection is respectfully traversed.

Each of claims 5, 16, 20 and 23 depend on claims 1, 13, 17 and 21, and thus, incorporates each of the elements of these claims. Gan does not cure the deficiencies of Davis and Rosen, as outlined above. Specifically, Gan does not teach or suggest "foregoing retransmission of the data packet when said number of consecutive times exceeds a predetermined threshold and when said means for detecting detects an acknowledgement transmission from the each of the plurality devices except for said particular device," as recited in 1, 13, 17 and 21 upon which claims 5, 16, 20 and 23 depend. Therefore, Applicants respectfully request that this rejection of claims 5, 16, 20 and 23 under 35 U.S.C. §103 be withdrawn.

Disclaimer

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

CONCLUSION

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 27592-00431-US from which the undersigned is authorized to draw.

Dated: October 2, 2009   Respectfully submitted,

                                            Electronic signature: /Arlene P. Neal/
                                            Arlene P. Neal
                                               Registration No.: 43,828
                                            CONNOLLY BOVE LODGE & HUTZ LLP
                                            1875 Eye Street, NW
                                            Suite 1100
                                            Washington, DC 20006
                                            (202) 331-7111
                                            (202) 293-6229 (Fax)
                                            Attorney for Applicant